Supreme Court, U. S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

NO. 79-5946

ROBERT and LINDA PARKINS, Appellants,

v.

PEOPLE OF THE STATE OF ILLINOIS, Appellee.

ON APPEAL FROM THE ILLINOIS SUPREME COURT

JURISDICTIONAL STATEMENT

Mary Robinson, Deputy Defender
Elizabeth E. Clarke, Assistant Defender
OFFICE OF THE STATE APPELLATE DEFENDER
63 Douglas Avenue
Elgin, Illinois 60102
(312) 695-8822

Counsel for Appellants

January 14, 1980

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N.D. CENT. CODE (1976), Sec. 12.1-17-07;

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_____

NO._____

ROBERT and LINDA PARKINS, Appellants,

v.

PEOPLE OF THE STATE OF ILLINOIS, Appellee.

ON APPEAL FROM THE ILLINOIS SUPREME COURT

JURISDICTIONAL STATEMENT

Introduction

Robert and Linda Parkins appeal from the judgment of the Illinois Supreme Court upholding an Illinois Statute against the claim that it was overbroad in violation of the First and Fourteenth Amendments and against the claim that it was unduly vague in violation of the Fifth and Fourteenth Amendments of the United States Constitution. This statement is submitted to show that the Supreme Court of the United States has jurisdiction of the appeal and that a substantial question is presented.

Opinion Below

The opinion of the Illinois Supreme Court is reported at ___Ill.2d___, 396 N.E.2d 22 (1979). A copy of the opinion is attached hereto as Appendix A.

Jurisdiction

The judgment of the Supreme Court of Illinois, upholding the constitutionality of Ill. Rev. Stat., (Supp., 1979), Chapter 134, Section 16.4-1, was entered on October 19, 1979. (See Appendix A). The case was before the Illinois Supreme Court on direct appeal by the State from the Circuit Court's order dismissing the charges of telephone harassment against the appellants on the ground that the telephone harassment statute, Ill. Rev. Stat., (Supp., 1979), Ch. 134, Section 16.4-1, was unconstitutionally

overbroad. Consequently, the only question before the Illinois Supreme Court was the facial validity of the Statute in light of the First, Fifth and Fourteenth Amendments of the United States Constitution.

Notice of Appeal to this Court was filed on January 14, 1980. (See Appendix C).

This appeal is being docketed in this Court within ninety days from the date judgment was entered by the Illinois Supreme Court. The jurisdiction of this Court is invoked under 28 U.S.C. Sec. 1257(2). Cases sustaining the jurisdiction of this Court to review the judgment herein are: Huffman v. Pursue, Ltd., Ohio, 420 U.S. 592, 605, 95 S.Ct. 1200, 43 L.Ed.2d 482, rehearing denied 421 U.S. 971, 95 S.Ct. 1969, 44 L.Ed. 2d 463 (1975); Cohen v. California, 403 U.S. 15, 17-18, 91 S.Ct. 1780, 29 L.Ed. 2d 284 (1971); Bantam Books, Inc. v. Sullivan, 372 U.S. 58, 61, n.3, 83 S.Ct. 631, 9 L.Ed. 2d 584 (1963).

Question Presented

Has the Illinois Supreme Court improperly balanced the important competing interests of a telephone user's First Amendment rights and the recipient's right to privacy by finding constitutional on its face the Illinois statute which broadly proscribes use of a telephone with the intent to "abuse, threaten or harass"?

Constitutional Provisions Involved

United States Constitution, Amendment One:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

United States Constitution, Amendment Five:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in

actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

United States Constitution, Amendment Fourteen, Section One:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Statute Involved

Illinois Revised Statutes, (Supp., 1979), Chapter 134, Sec. 16.4-1. Harassment by telephone.

Harassment by telephone is use of telephone communication for any of the following purposes:

(1) Making any comment, request, suggestion or proposal which is obscene, lewd, lascivious, filthy or indecent with an intent to offend; or

(2) Making a telephone call, whether or not conversation ensues, with intent to abuse, threaten or harass any person at the called number; or

(3) Making or causing the telephone of another repeatedly to ring, with intent to harass any person at the called number; or

(4) Making repeated telephone calls, during which conversation ensues, solely to harass any person at the called number; or

(5) Knowingly permitting any telephone under one's control to be used for any of the purposes mentioned herein.

Every telephone directory published for distribution to members of the general public shall contain a notice setting forth a summary of the provisions of this Section. Such notice shall be printed in type which is no smaller than any other type on the same page and shall be preceded by the word "WARNING." All telephone companies in this State shall cooperate with law enforcement agencies in using their facilities and personnel to detect and prevent violations of this Act.

Raising the Federal Question

At the earliest stage of the criminal proceedings below the appellants raised the claim, in a motion to dismiss the charge in the complaint, that the statute in question, Ill. Rev. Stat., (Supp. 1979), Ch. 134, Sec. 16.4-1, was unconstitutionally vague and facially overbroad. (Robert Parkins, C. 7; Linda Parkins, C. 8).* The Circuit Court found Section (2) of the statute, pursuant to which both appellants were charged, to be overbroad and held: "...paragraph (2) in violation of the first amendment right of free speech." (Robert Parkins, C. 10-11; Linda Parkins, C. 11-12; copy of Circuit Court opinion attached in whole hereto as Appendix B).

The claim was reiterated by the appellants before the Supreme Court of Illinois, which Court expressly rejected said claim and found the statute in question neither vague nor overbroad.

Statement of the Case

On August 21, 1978, Robert and Linda Parkins were charged by criminal complaint filed in the Circuit Court of the 17th Judicial Circuit, Winnebago County, Illinois, with the offense of harassment by telephone, by having made a telephone call "...with intent to abuse, threaten or harass Richard E. Bonavia and members of his family at the called number." (Robert Parkins, C. 2; Linda Parkins, C. 3). The defendants filed a motion to dismiss the charge in the complaint based on their argument that the statue in question, Ill. Rev. Stat.,(Supp.1979), Ch. 134, Sec. 16.4-1, was unconstitutionally vague and facially overbroad. (Robert Parkins, C. 7; Linda Parkins, C. 8). Associate Judge Bradner C. Riggs of the Seventeenth Judicial Circuit Court granted the motion in an opinion,** filed on October 4, 1978, which stated in part:

> We may presume the legislature is attempting to ban a type of unreasonable conduct which, by

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* "C" designates the common law record on appeal.

** The opinion of the Seventeenth Judicial Circuit Court, Winnebago County, Illinois, is attached hereto as Appendix B.

its very nature, attacks the peace of mind of the person called and certainly the State has a legitimate interest in protecting the privacy of citizens from a particular type of perverse phone call. However, every harassment, every abuse, every threat is not unreasonable, and under certain sets of circumstances, in fact, may be most reasonable. In Klick * the Court sets forth numerous examples of circumstances where a telephone call might be an annoyance and not be unreasonable. To repeat the Court's language from Klick, "First amendment protection is not limited to amicable communications."

...I find the language of Chapter 134, Section 16.4-1(2), Illinois Revised Statutes (1977) is overbroad and, following the mandate of People v. Klick, decline to find an implicit provision of unreasonableness in view of the unambiguous language of the statute. Thus, we hold paragraph (2) in violation of the first amendment right of free speech.

(Robert Parkins, C. 10-11; Linda Parkins, C. 11-12).

The State took a direct appeal to the Supreme Court of Illinois. In an opinion issued on October 19, 1979, the Illinois Supreme Court held the telephone harassment statute, Ill. Rev. Stat., (Supp., 1979), Ch. 134, Sec. 16.4-1, to be constitutional. The Court merely applied the maxim noscitur a sociis, that a word is known by the company it keeps, to reason that the words "abuse" and "harass" in the telephone harassment statute take color from the word "threaten" and thus acquire more restricted meanings.

Justice Thomas J. Moran dissented, and stated as follows:

In People v. Klick (1977), 66 Ill. 2d 269, 5 Ill.Dec. 858, 362 N.E.2d 329, this court held a similar statute overly broad for failure to set forth objective standards by which to evaluate the conduct proscribed. The present statute has merely added new words, but, in my opinion, fails to set forth any objective standard. Here, as in Klick, the State asks that we supply the standard by holding that the present enactment applies only to telephone calls made "in an unreasonable manner." In Klick, we declined the invitation but clearly set forth the corrective measures that the legislature could follow to avoid the present problem. The legislature having failed to implement those corrective measures, the new enactment suffers from the same malady: it is overly broad. It is my feeling that the new verbiage provides no more objective standards than the old statute, and that the majority, by its opinion, has effectively overruled the decision in Klick.

* People v. Klick, 66 Ill.2d 269, 362 N.E.2d 329 (1977).

The Question is Substantial

The question as to the First Amendment implications of the wide-spread practice of penalizing persons who make harassing telephone calls is a novel and substantial one. It has never before been addressed by this Court.

The wide-spread use of telephonic communication has engendered a variety of speech-related conduct arguably subject to criminal regulation. Speech-related conduct such as lewd telephone calls, calls made for the purpose of threatening physical harm, and repeated anonymous calls, constitute clear invasions of the recipient's right of privacy without substantial encroachment upon the telephone user's protected First Amendment rights. However, the proper balance between the right of the state to protect the individual's right of privacy in the home versus protected First Amendment rights is less clear when the speech-related conduct involves, for example, business-related telephone solicitations or the potentially harassing calls made in the course of political campaigns. As a result, criminal legislative approaches in this area vary greatly, between attempts to regulate virtually every invasion of privacy at the expense of First Amendment rights, and more narrowly drawn statutes which set forth each specific type of conduct to be regulated.

The Illinois Supreme Court recently upheld the Illinois telephone harassment statute. In a direct appeal, by the State from a Circuit Court order finding the statute unconstitutionally overbroad, the Supreme Court held the statute to be constitutional because, the Court reasoned, the clear meaning of the word "threaten" limited the meaning of the words "abuse" and "harass". The pertinent portion of the Illinois telephone harassment statute reads as follows:

Ill. Rev. Stat., (Supp., 1979), Ch. 134, Sec. 16.4-1. Harassment by telephone.

Harassment by telephone is use of telephone communications for any of the following purposes:

(2) Making a telephone call, whether or not conversation ensues, with intent to abuse, threaten or harass any person at the called number...

In its ruling, the Court failed to confront the overbreadth problem inherent in the statute due to its lack of specific guidelines delineating the conduct which constitutes threat, abuse or harassment by telephone.[1] The ruling of the Court is particularly surprising due to its holding two years previous that a similar statute was unconstitutionally overbroad.[2]

This Court has noted that legitimate legislative goals cannot be pursued by "...means which broadly stifle fundamental personal liberties when the end can be more narrowly achieved." Shelton v. Tucker, 364 U.S. 479, 81 S.Ct. 247, 5 L.E.2d 231, 237 (1960). See also Elfbrandt v. Russell, 384 U.S. 11, 86 S.Ct. 1238, 16 L.Ed.2d 321 (1966). In this case, the Illinois legislature has promulgated a telephone harassment statute, which aims to proscribe types of speech-related conduct clearly within the State's power to prohibit, yet which lacks objective standards by which to evaluate the conduct proscribed and thus includes within its sweep conduct protected by the First Amendment. The legislative goal of proscribing illegitimate use of telephones can be more narrowly achieved. Indeed, this Court has specified

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[1] The instant case is distinguishable from Constantino v. State, 243 Ga. 595, ___S.E.2d___ (May 2, 1979), where this Court recently denied certiorari, by the fact that the Constantino petition for writ of certiorari attacked only the vagueness of the Georgia telephone harassment statute; it did not attack the statute as being facially overbroad.

[2] The earlier version of the Illinois telephone harassment statute held unconstitutionally overbroad in People v. Klick, 66 Ill.2d 269, 362 N.E.2d 329 (1977), read as follows: "A person commits disorderly conduct when he knowingly: (2) With intent to annoy another, makes a telephone call, whether or not conversation thereby ensues..." Ill. Rev. Stat., 1973, Ch. 38, Sec. 26-1(a)(2). In apparent frustration with the failure of the legislature to follow its narrowing recommendations in Klick, the Court upheld the current statute despite its lack of guidelines. (See Justice Moran's dissent in Parkins, set forth in full herein in the Statement of the Case.)

the kind of speech and speech-related activity that a State can label as criminal, consistent with the First Amendment:

> These include the lewd and obscene, the profane, the libelous, and the insulting or "fighting" words - those which by their very utterance inflict injury or tend to incite an immediate breach of the peace.

Chaplinsky v. New Hampshire, 315 U.S. 568, 62 S.Ct. 766, 86 L.Ed. 1031, 1035 (1942).

The Illinois statute is so broadly drafted as to be susceptible of application to such areas as "harassing" telephone solicitations by business; telephone calls involving a family feud which are "abusing"; and telephone calls made with the intent to "threaten" to cancel a subscription for a service if the quality of the service is not improved. Thus, the Illinois legislature has gone far beyond the limitations set forth by this Court in Chaplinsky.

Illinois is not alone in failing to achieve a proper balance between the First Amendment rights of the telephone user and the right of privacy of the recipient.[3] New York and Oregon both have extremely broad statutes proscribing telephonic communications made in "... a manner likely to cause annoyance or alarm."[4] Wisconsin has an equally broad statute proscribing calls made with the intent to "annoy" another.[5] Yet, this Court has recognized that states which attempt to regulate "abusive" language infringe upon the subject area protected by the First and Fourteenth Amendments. Gooding v. Wilson, 405 U.S. 518, 92 S.Ct. 1103, 13 L.Ed. 2d 408 (1972). In Gooding, this Court held unconstitutionally vague and overbroad a Georgia statute which provided criminal penalties for the use of "opprobrious words or abusive language, tending to cause a breach of the peace." The language in the Illinois statute at issue here as well as that of the statutes of Wisconsin, New York, and Oregon, sweeps even more broadly than the language disapproved in Gooding without even the qualifying phrase "tending to cause a

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[3] See Appendix D for a list of current telephone harassment statutes in this country.

[4] N.Y. PENAL LAW (McKinney, 1978-1980 Supp.), Sec. 240.30; OR. REV. STAT. (1971), Sec. 166.065.

[5] WISC. STAT. ANN. (West, 1958), tit. 45, Sec. 947.01.

breach of the peace", thus encompassing legitimate communications protected by the First Amendment.

Recognizing the danger of infringing upon protected speech, some states, such as Hawaii and Utah, have simply included in their ban of annoying or alarming telephone calls the caveat that the call be made "...without purpose of legitimate communications.".[6] Yet, the Colorado Supreme Court held subsection (1)(e) of the Colorado telephone harassment statute, Colo.Rev. Stat. (1973), Sec. 18-9-111, facially overbroad and therefore unconstitutional despite the district court's limitation that the statute applied only to conduct engaged in for no legitimate purpose, and stated:

> We again point out that the subsection in question deals with speech. Adding a phrase "without any legitimate purpose" to that subsection injects a vagueness into the statute which cannot withstand First Amendment scrutiny. Such a "limiting construction" disguises the constitutional difficulties of the statute but does nothing to resolve them. A judge or a jury still has to determine whether or not the particular speech of the defendant was "for a legitimate purpose." This delegation of power to judges or juries with no ascertainable standards does not give sufficient breathing room to the constitutionally guaranteed freedoms of speech and press.

Bolles v. People, 189 Colo. 394, 541 P.2d 80, 83(1975). Thus, there is substantial disagreement among the states as to whether simply inserting the phrase "without purpose of legitimate communication" is sufficient to prevent the infringment of protected First Amendment rights.

At least one state, South Dakota, has drafted a statute sufficiently narrow to proscribe only illegitimate communication:

> It shall be unlawful for any person to use a telephone for any of the following purposes:
>
> (1) To call another person with intent to terrorize, intimidate, threaten, harass, or annoy such person by using any obscene or lewd language or by suggesting any lewd or lascivious act;
>
> (2) To call another person with intent to threaten to inflict physical harm or injury to any person or property;
>
> (3) To call another person with intent to extort money or other things of value;
>
> (4) To call another person with intent to disturb any person by repeated anonymous telephone calls or intentionally failing to replace the receiver or disengage the telephone connection.
>
> It shall be unlawful for any person to knowingly permit any telephone under his control to be used for any purposes prohibited by this section.

S. D. COMPILED LAWS ANN. (1967), Sec. 49-31, et seq. Legislation more narrow than Illinois has also been promulgated in this area by North Dakota, Utah, Vermont, Washington, Idaho, Nebraska, and Louisiana.[7] By more carefully detailing the precise activities which are proscribed, rather than broadly proscribing all "annoying" or "harassing" calls, these states avoid some of the overbreadth problems inherent in the Illinois statutes.

The conflicting approaches taken by the various states to legislation proscribing speech-related conduct in the area of telephonic communication merit consideration by this Court. The approach taken by Illinois fails to provide a proper balance between the First Amendment rights of the telephone user and the right of privacy of the recipient.

CONCLUSION

For these reasons, this Court should note probable jurisdiction of this appeal.

Respectfully submitted,

Mary Robinson, Deputy Defender
Elizabeth E. Clarke, Assistant Defender
OFFICE OF THE STATE APPELLATE DEFENDER
63 Douglas Avenue
Elgin, Illinois 60120
(312) 695-8822

January 14, 1980

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6 HAW. REV. STAT. (1976), Sec. 711-1106; UTAH CODE ANN. (1978), Sec. 76-9-201.

7 N.D. CENT. CODE (1976), Sec. 12.1-17-07; UTAH CODE ANN., (1978), Sec. 76-9-201; VT. STAT. ANN. (1974), tit. 13, Sec. 1027; WASH. REV. CODE. (1977), Sec. 9.61.230, et seq.; IDAHO CODE (1979), Sec. 18-6710, 6711; NEB. REV. STAT. (1975), Sec. 28-1127; LA. REV. STAT. ANN. (1974), Sec. 14:285.

APPENDIX A

Opinion of the Illinois Supreme Court

The PEOPLE of the State of Illinois, Appellant,

v.

Robert PARKINS et al., Appellees.

The PEOPLE of the State of Illinois, Appellant,

v.

Linda ROSS, Appellee.

Nos. 51467, 51468 and 51504.

Supreme Court of Illinois.

Oct. 19, 1979.

Defendants were charged, in separate prosecutions, with the offense of harassment by telephone. The Circuit Court of Winnebago County, Bradner C. Rogga, J., and the Circuit Court of Sangamon County, Jerry S. Rhodes, J., each held the statute defining the offense of harassment by telephone unconstitutional and dismissed the charges. The People appealed and the cases were consolidated for review. The Supreme Court, Goldenhersh, C. J., held that the statute was not vague or overbroad.

Reversed.

Thomas J. Moran, J., dissented and filed opinion.

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Statute defining offense of harassment by telephone was not unconstitutionally vague or overbroad in requiring proof of intent "to abuse, threaten or harass." S.H.A. ch. 134, § 16.4–1(2); U.S.C.A.Const. Amend. 1.

William J. Scott, Atty. Gen., Chicago, and C. Joseph Cavanagh, State's Atty., Springfield, and Daniel D. Doyle, State's Atty., Rockford (Donald B. MacKay and Melbourne Noel, Asst. Attys. Gen., Chicago, and Phyllis J. Perko, Deputy Director, and Barbara A. Preiner, Staff Atty., State's Attys. App. Service Commission, Elgin, of counsel), for the People in both cases.

Mary Robinson, Deputy Defender, and Elizabeth E. Clarke, Asst. Defender, Elgin, for appellees in Parkins case.

No brief for appellee in Ross case.

GOLDENHERSH, Chief Justice:

In causes numbered 51467 and 51468 the People appealed from the judgments of the circuit court of Winnebago County entered upon allowance of the motion to dismiss filed by defendants Robert Parkins and Linda Parkins, charged in a single complaint with the offense of harassment by telephone in violation of section 1–1 of "An Act * * * to prevent harassment by the use of telephone communications * * *" (the Act) (Ill.Rev.Stat.1977, ch. 134, par. 16.4–1(2)). In cause No. 51504 the People appeal from the judgment of the circuit court of Sangamon County, entered upon allowance of the motion of defendant Linda Ross to dismiss similar charges. In each instance the circuit court held the statute unconstitutional and the People have appealed pursuant to Rule 302(a)(1) (58 Ill.2d R. 302(a)(1)). The cases were consolidated in this court.

Section 1–1 of the Act in pertinent part provides:

"Harassment by telephone is use of telephone communication for any of the following purposes:

* * * * * *

(2) Making a telephone call, whether or not conversation ensues, with intent to abuse, threaten or harass any person at the called number; * * *." Ill.Rev.Stat.1977, ch. 134, par. 16.4–1(2).

Defendants contend that, when a statute "which is susceptible of application to conduct protected by the First Amendment presents the danger of a 'chilling effect,'" it is unconstitutionally overbroad. They argue that the "telephone harassment statute is impermissibly vague because no standard of conduct is specified."

The People submit that "To the extent that the telephone harassment statute might be susceptible to unconstitutionally overly broad interpretation, any such problem may be cured by the imposition by the courts of this State of a limiting construction on the statute." The People urge this court to give effect to the "clear language of the statute" and hold that the statute, as it currently exists, only applies to telephone calls made "in an unreasonable manner." Further, the People contend that the statute is not vague in giving notice of exactly what conduct is prohibited, and that the language of the subsection is sufficiently specific to allow those charged with enforcing the law to avoid discriminatory enforcement.

In *People v. Klick* (1977), 66 Ill.2d 269, 5 Ill.Dec. 858, 362 N.E.2d 329, this court held unconstitutional as overbroad section 26–1(a)(2) of the Criminal Code of 1961 (Ill.Rev.Stat.1973, ch. 38, par. 26–1(a)(2)), which in pertinent part provided:

"(a) A person commits disorderly conduct when he knowingly:

* * * * * *

(2) With intent to annoy another, makes a telephone call, whether or not conversation thereby ensues; * * *."

Subsequent to the filing of our opinion in *Klick*, the General Assembly enacted the statute upon which these cases are based. Pub.Act 80–795, passed June 26, 1977, approved September 18, 1977.

In *People v. Schwartz* (1976), 64 Ill.2d 275, 1 Ill.Dec. 8, 356 N.E.2d 8, considering the contentions that the statute there involved was vague and overbroad the court said:

"A criminal statute violates the requirement of due process of law if it fails to adequately give notice as to what action or conduct is proscribed. (*People v. Vandiver* (1971), 51 Ill.2d 525 [, 283 N.E.2d 681.]) Impossible standards of specificity, however, are not required. (*Jordan v. DeGeorge* (1951), 341 U.S. 223, 231, 71 S.Ct. 703, 95 L.Ed. 836; *People v. Dednam* (1973), 55 Ill.2d 565 [, 304 N.E.2d 627.]) As stated by Mr. Justice Marshall, 'Condemned to the use of words, we can never expect mathematical certainty from our language.' (*Grayned v. City of Rockford* (1972), 408 U.S. 104, 110, 92 S.Ct. 2294, 33 L.Ed.2d 222, 228–29.) When called upon to decide a vagueness question, a court will assume, absent contrary legislative intent, that the words of the statute have their ordinary and popularly understood meanings. (*Farrand Coal Co. v. Halpin* (1957), 10 Ill.2d 507, 510 [, 140 N.E.2d 698.]) In addition to the language used, consideration is given to the legislative objective and the evil the statute seeks to remedy. (*People v. Dednam* (1973), 55 Ill.2d 565 [, 304 N.E.2d 627.]) A statute enjoys a presumption of constitutionality. *Livingston v. Ogilvie* (1969), 43 Ill.2d 9, 12 [250 N.E.2d 138.]

* * * * * *

A statutory enactment, though sufficiently clear and precise to withstand a vagueness attack, may nevertheless be impermissibly overbroad if it may reasonably be interpreted to prohibit conduct which is constitutionally protected. (*Grayned v. City of Rockford* (1972), 408 U.S. 104, 92 S.Ct. 2294, 33 L.Ed.2d 222.)" 64 Ill.2d 275, 280–82, 1 Ill.Dec. 8, 11, 356 N.E.2d 8, 11.

The determination of the legislative intent in requiring proof of the intent "to abuse, threaten or harass" rather than as in the earlier statute, the intent "to annoy," would appear, appropriately, to invoke the maxim *noscitur a sociis*. As the Supreme Court observed in *Jarecki v. G. D. Searle & Co.* (1961), 367 U.S. 303, 307, 81 S.Ct. 1579, 1582, 6 L.Ed.2d 859, 869, "The maxim *noscitur a sociis*, that a word is known by the company it keeps, while not an inescapable rule, is often wisely applied where a word is capable of many meanings in order to avoid the giving of unintended breadth to the Acts of Congress." Thus the words "abuse" and "harass" take color from the word "threaten" and acquire more restricted meanings.

In *People v. Raby* (1968), 40 Ill.2d 392, 240 N.E.2d 595, the court considered the validity of section 26–1(a) of the Criminal Code of 1961, which in pertinent part provided:

"A person commits disorderly conduct when he knowingly:

(1) Does any act in such unreasonable manner as to alarm or disturb another and to provoke a breach of the peace * * *." (Ill.Rev.Stat.1967, ch. 38, par. 26–1.)

In discussing the statute, and holding it valid, the court said:

"It is true that section 26–1(a) does not attempt to particularize all of the myriad kinds of conduct that may fall within the statute. The legislature deliberately chose to frame the provision in general terms, prompted by the futility of an effort to anticipate and enumerate all of the methods of disrupting public order that fertile minds might devise." (40 Ill.2d 392, 396, 240 N.E.2d 595, 598.)

We find the foregoing comment apposite. We hold that the statute is neither vague nor overbroad and the judgments are, therefore, reversed.

Judgments reversed.

THOMAS J. MORAN, Justice, dissenting:

In *People v. Klick* (1977), 66 Ill.2d 269, 5 Ill.Dec. 858, 362 N.E.2d 329, this court held a similar statute overly broad for failure to set forth objective standards by which to evaluate the conduct proscribed. The present statute has merely added new

words, but, in my opinion, fails to set forth any objective standard. Here, as in *Klick*, the State asks that we supply the standard by holding that the present enactment applies only to telephone calls made "in an unreasonable manner." In *Klick*, we declined the invitation but clearly set forth the corrective measures that the legislature could follow to avoid the present problem. The legislature having failed to implement those corrective measures, the new enactment suffers from the same malady: it is overly broad. It is my feeling that the new verbiage provides no more objective standards than the old statute, and that the majority, by its opinion, has effectively overruled the decision in *Klick*.

APPENDIX B

Opinion of the Seventeenth Judicial Circuit Court,
Winnebago County, Illinois

STATE OF ILLINOIS
CIRCUIT COURT
SEVENTEENTH JUDICIAL CIRCUIT

BRADNER C. BIGGS
Associate Judge

Courthouse Building
ROCKFORD, ILLINOIS 61101
Phone (815) 987-3062

People of the State of Illinois)
)
vs.) No. 78 CM 2943
) 78 CM 2944
Linda Parkins and Robert Parkins)

FILED
Oct. 4 1978
Ronald Katzke
Clerk of the Circuit Court
Deputy

OPINION
And
ORDER GRANTING MOTION TO DISMISS

Defendants were charged with Harrassment By Telephone in violation of Chapter 134, Section 16.4-1, Illinois Revised Statutes (1977) and specifically with violation of paragraph (2) of that section. The language of the complaint is as follows:

> (they) " made a telephone call, with intent to abuse, threaten or harrass Richard E. Bonavia and members of his family at the called number."

Defendants filed a Motion to Dismiss Charge alleging the charge in the complaint is (a) in the disjunctive, rendering it vague and uncertain and thus violative of due process guarantees; and (b) the statute is violative of the constitutional right of free speech because the statutory language is "overbroad".

I do not concur that the use of disjunctive pleading is , per se, in violation of the Due Process Clause. Case law is replete with examples of when disjunctive pleading is or is not violative of due process I will not belabor that point with comparitives. I agree the language in this particular complaint is vague, but it is a vagueness easily

cured by amendment with a descriptive "to wit" clause.

Peter Nolte, Attorney for the Defendants, pointed out correctly in argument that the words "abuse, threaten or harass" are not legal words of art and must be given their normal usage dictionary meaning. The question is then whether a statute proscribing any telephone call with intent to abuse, threaten or harass is overbroad, and thus, violative of the first amendment right of free speech. In People vs. Klick, 66 ILL 2d 269, our Supreme Court addressed itself to exactly the point in issue. In Klick, the constitutionality of a criminal statute for disorderly conduct proscribed any telephone call made with intent to annoy. The Court pointed out that the language of the statute made the call itself a criminal act even though the annoying content of the call was not such as might provoke a breach of the peace. By so doing, the legislature swept too broadly and made criminal an act protected by the first amendment, that is, the right to communicate in a reasonable manner.

The language of Chapter 134, Section 16.4-1 (2), Illinois Revised Statutes (1977) is absolutely clear and unambiguous. "Harrassment by telephone is use of telephone communication for any of the following purposes: ... (2) making a telephone call, whether or not conversation ensues, with intent to abuse, threaten or harass any person at the called number."

We may presume the legislature is attempting to ban a type of unreasonable conduct which, by its very nature, attacks the peace of mind of the person called and certainly the State has a legitimate interest in protecting the privacy of citizens from a particular type of perverse phone call. However, every harassment, every abuse, every threat is not unreasonable, and under certain sets of circumstances, in fact, may be most reasonable. In Klick, the Court sets forth numerous

examples of circumstances where a telephone call might be an annoyance and not be unreasonable. To repeat the Court's language from Klick, "First amendment protection is not limited to amicable communications."

In order to deny defendants' motion to dismiss, we would have to find the unambiguous language of the section of the statute in issue has an implicit proviso that the telephone call be made in an unreasonable manner. By doing so, we would be undertaking a legislative function. This we can not do. People v Flaherty 396 ILL 304, 312-13.

I find the language of Chapter 134, Section 16.4-1 (2), Illinois Revised Statutes (1977) is overbroad and, following the mandate of People v Klick, decline to find an implicit provision of unreasonableness in view of the unambiguous language of the statute. Thus, we hold paragraph (2) in violation of the first amendment right of free speech.

On these grounds, Defendants' Motion to Dismiss is granted and it is so ordered.

Bradner C Riggs

THE HONORABLE BRADNER C. RIGGS
ASSOCIATE CIRCUIT JUDGE

NOS. 51467 & 51468

IN THE

SUPREME COURT OF THE STATE OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellant, -vs- ROBERT PARKINS and LINDA PARKINS, Defendants-Appellees.	Appeal from the Circuit Court for the 17th Judicial Circuit, Winnebago County, Illinois. Nos. 78-CM-2944 and 78-CM-2943 Honorable Bradner C. Riggs, Judge Presiding.

NOTICE AND PROOF OF SERVICE

TO: Honorable William J. Scott
Attorney General of Illinois
188 West Randolph Street
Chicago, Illinois 60601

Phyllis J. Perko, Deputy Director
Illinois State's Attorneys
Appellate Service Commission
35 Fountain Square Plaza
Elgin, Illinois 60120

Daniel Doyle
State's Attorney
Winnebago County Courthouse
Rockford, Illinois 61105

Robert & Linda Parkins
3305 Liberty Drive
Rockford, Illinois 61103

Jon Gary Noll
608 Ridgely Building
Springfield, Illinois 62701

You are hereby notified that on January 14, 1980, we mailed the original and one copy of the attached Notice of Appeal to the Supreme Court of the United States to the Clerk of the Illinois Supreme Court, a copy of which is hereby served on you.

Mary Robinson

Mary Robinson, Deputy Defender

STATE OF ILLINOIS)
) SS.
COUNTY OF KANE)

The undersigned being first duly sworn on oath deposes and says that she mailed the required number of copies of the Notice of Appeal to the Supreme Court of the United States in the above entitled cause to the Clerk of the Illinois Supreme Court, the Attorney General of Illinois and the State's Attorney of Winnebago County, by depositing them in the U.S. Mail in Elgin, postage prepaid, this 14th day of January, 1980.

Mary Robinson

Mary Robinson, Deputy Defender

Subscribed and sworn to before me
this 14th day of January, 1980.

Donna M. Lynch

Notary Public

NOS. 51467 & 51468

IN THE

SUPREME COURT OF THE STATE OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellant, -vs- ROBERT PARKINS and LINDA PARKINS, Defendants-Appellees.	Appeal from the Circuit Court for the 17th Judicial Circuit, Winnebago County, Illinois. Nos. 78-CM-2944 and 78-CM-2943 Honorable Bradner C. Riggs, Judge Presiding.

NOTICE OF APPEAL TO THE SUPREME COURT
OF THE UNITED STATES

Notice is hereby given that Robert and Linda Parkins, the defendants above-named, hereby appeal to the Supreme Court of the United States from the final order of the Supreme Court of Illinois of October 19, 1979, upholding the constitutionality of Ill.Rev.Stat., (Supp., 1979), Ch. 134, Sec. 16.4-1.

This appeal is taken pursuant to 28 U.S.C. Section 1257(2).

Mary Robinson

Mary Robinson, Deputy Defender

Elizabeth E. Clarke, Assistant Defender
OFFICE OF THE STATE APPELLATE DEFENDER
63 Douglas Avenue
Elgin, Illinois 60120
(312) 695-8822

Counsel for Appellees

APPENDIX D

ALA. CODE (1975), tit. 20, Sec. 37-8-214.

ALASKA STAT. (1980), Sec. 11.61.120.

ARIZ. REV. STAT. (1978), Sec. 13-2916.

ARK. STAT. ANN. (1975), Sec. 41-2910.

CAL. PENAL CODE (West, 1970), Sec. 653m.

COLO. REV. STAT. (1973), Sec. 18-9-111.

CONN. GEN. STAT. ANN. (1972), Sec. 53a-183.

DEL. CODE (1974), tit. 11, Sec. 1311, 1312.

FLA. STAT. ANN. (West Supp., 1979), Sec. 365.16 [Repealed by Laws 1976, c. 76-168, Sec. 3, eff. July 1, 1980].

GA. CODE ANN. (1977 Rev.), Sec. 26-2610(e); (Supp., 1979) Sec 104-9901 (b).

HAW. REV. STAT.(1976), Sec. 711-1106.

IDAHO CODE (1979), Sec. 18-6710, 6711.

ILL. REV. STAT. (Supp., 1979), Ch. 134, Sec. 16.4-1.

IND. CODE (Cum. Supp., 1979), Sec. 35-45-2-2.

IOWA CODE ANN. (1979), Sec. 708.7.

KAN. STAT. (Cum. Supp., 1976), Sec. 21-4113.

KY. REV. STAT. ANN. (1975), Sec. 525.070, et seq.

LA. REV. STAT. ANN. (1974), Sec. 14:285.

ME. REV. STAT. ANN. (1979), tit. 17-A, Sec. 506.

MD. CRIM. LAW CODE ANN. (1957), Art. 27, Sec. 555A.

MASS. GEN. LAWS ANN. (West Supp., 1979), Ch. 269, Sec. 14A.

MICH. COMP. LAWS ANN. (1972), Sec. 28.808 (5).

MINN. STAT. ANN. (West Supp., 1979), Sec. 609.79.

MISS. CODE ANN. (1972), Sec. 97-29-45.

NEB. REV. STAT. (1975), Sec. 28-1127.

NEV. REV. STAT. (1973), Sec. 201.255.

N. H. REV. STAT. ANN. (1974), Sec. 644:4.

N. J. STAT. ANN. (Supp., 1979), Sec. 2A:170-29 [Repealed by L. 1978, c. 95, Sec. 2c:98-2, eff. Sept. 1, 1979].

N. M. STAT. ANN. (1978), Sec. 30-20-12.

N. Y. PENAL LAW (McKinney, 1978-80 Supp.), Sec. 240.30.

N. C. GEN. STAT. (1969), Sec. 14-196.

D-1

N. D. CENT. CODE (1976), Sec. 12.1-17-07.

OHIO REV. CODE ANN. (Page, 1977) Sec. 4931.31.

OKLA. STAT. ANN. (Supp., 1979-80), tit. 21
Sec. 1172.

OR. REV. STAT. (1971), Sec. 166.065.

18 PA. CONS. STAT. ANN. (Purdon, 1973), Sec. 5504.

R. I. GEN. LAWS (1969), Vol. 3, Sec. 11-35-17.

S. C. CODE (1976), Sec. 16-17-430.

S. D. COMPILED LAWS ANN. (1967), Sec. 49-31-31, et seq.

TENN. CODE ANN. (Supp. 1978), Sec. 39-3032.

TEX. PENAL CODE ANN. (Vernon, 1974), tit.9,
Sec. 42.07.

UTAH CODE ANN., (1978), Sec. 76-9-201.

VT. STAT. ANN. (1974), tit.13, Sec. 1027.

VA. CODE (Supp., 1978), Sec. 18.2-427, et seq.

WASH. REV. CODE (1977), Sec. 9.61.230, et seq.

W. VA. CODE (1977), Sec. 61-8-16.

WISC. STAT. ANN. (West, 1958), tit. 45, Sec. 947.01.

WYO. STAT. (1977), Sec. 6-4-612.

FILED
APR 1 1980
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

NO. 79-5946

ROBERT and LINDA PARKINS, Appellants,

v.

PEOPLE OF THE STATE OF ILLINOIS, Appellee.

ON APPEAL FROM THE ILLINOIS SUPREME COURT

MOTION TO DISMISS OR AFFIRM

William J. Scott
Attorney General
Donald B. MacKay
Melbourne Noel
Assistant Attorneys General
188 W. Randolph
Suite 2200
Chicago, Illinois 60601
(312) 793-2570

Daniel D. Doyle
State's Attorney
Winnebago County
Rockford, Illinois 61105
(815) 987-3160

Phyllis J. Perko
Deputy Director
Barbara A. Preiner
Staff Attorney
State's Attorneys Appellate
Service Commission
35 Fountain Square Plaza
Elgin, Illinois 60120
(312) 697-0020

COUNSEL FOR APPELLEE

March 28, 1980

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Collection Consultants, Inc. v. State, 556 SW.2d 787 (Tex.Ct.Crim.App. 1977), appeal dismissed 436 U.S. 901 (1978)

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Shelton v. Tucker, 364 U.S. 479, 81 S.Ct. 247, 5 L.Ed.2d 231 (1960)

People v. Parkins, 77 Ill.2d 253, 396 N.E.2d 22, 32 Ill.Dec. 909 (1979)

People v. Klick, 66 Ill.2d 269, 362 N.E.2d 329, 5 Ill.Dec. 329 (1977)

Walker v. Dillard, 523 F.2d 3 (4th Cir. 1975), cert. den. 423 U.S. 906 (1975)

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STATUTES

Ill.Rev.Stat.1977, Ch. 134, Sec. 16.4-1(2)

La.Rev.Stat.Ann. (1974) Sec. 14:285

Ill.Rev.Stat.1977, Ch. 38, Sec. 15-1

Ill.Rev.Stat.1973, Ch. 38, Sec. 26-1(a)(2)

Va. Code, (1950) Sec. 18.1-238

N.C. Gen. Stat., (1969) Sec. 14-196

Conn.Gen.Stat.Ann., (1972) Sec. 53a-183

Md.Crim.Law Code Ann., (1957) Art. 27, Sec. 555A

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

NO. 79-5946

ROBERT and LINDA PARKINS, Appellants,

v.

PEOPLE OF THE STATE OF ILLINOIS, Appellee.

MOTION TO DISMISS OR AFFIRM

INTRODUCTION

The People of the State of Illinois, Appellee, move this Honorable Court to dismiss the appeal herein, or, in the alternative, to affirm the judgment of the Supreme Court of the State of Illinois, on the ground that it is manifest that the question presented by this appeal is so unsubstantial as not to require further argument.

THE STATUTE INVOLVED

This appeal raises the question of the constitutionality of a subsection of the Illinois Statute prohibiting telephone harassment (Ill.Rev.Stat.1977, Ch. 134, Sec. 16.4-1(2)). That statute is as follows:

> Harassment by telephone is use of telephone communication for any of the following purposes:
>
> (1) Making any comment, request, suggestion or proposal which is obscene, lewd, lascivious, filthy or indecent with an intent to offend; or
>
> (2) Making a telephone call, whether or not conversation ensues, with intent to abuse, threaten or harass any person at the called number; or

> (3) Making or causing the telephone of another repeatedly to ring, with intent to harass any person at the called number; or
>
> (4) Making repeated telephone calls, during which conversation ensues, solely to harass any person at the called number; or
>
> (5) Knowingly permitting any telephone under one's control to be used for any of the purposes mentioned herein.
>
> Every telephone directory published for distribution to members of the general public shall contain a notice setting forth a summary of the provisions of this Section. Such notice shall be printed in type which is no smaller than any other type on the same page and shall be preceded by the word "WARNING". All telephone companies in this State shall cooperate with law enforcement agencies in using their facilities and personnel to detect and prevent violations of this Act.

THE NATURE OF THE CASE

The Appellants, Robert and Linda Parkins were charged in a criminal complaint filed on August 21, 1978, with the offense of harassment by telephone in that they made a telephone call " . . . with the intent to abuse, threaten or harass Richard E. Bonavia and members of his family at the called number." (Robert Parkins, C* 2, Linda Parkins, C 3). The Appellants filed a motion to dismiss the complaint charging that the statute under which the charge was brought was facially overbroad and vague, and therefore unconstitutional (Robert Parkins C 7, Linda Parkins, C 8).

The Appellant's motion to dismiss was granted by the Honorable Bradner C. Riggs, an associate judge of the Seventeenth Judicial Circuit, Winnebago County, in an opinion filed October 4, 1978.** Judge Riggs found the subsection of the statute under which the Appellants had been charged to be overbroad.

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*"C" refers to the common law record on appeal

**This opinion is attached to the Jurisdictional Statement as Appendix B

The State took a direct appeal from this finding to the Illinois Supreme Court. In an opinion issued October 19, 1979, the Illinois Supreme Court found the statute constitutional.* That Court found that the statute was not overbroad because the words "abuse" and "harass" acquire a more restricted meaning because they were used in conjunction with the word "threaten".

The Appellants appeal directly to this Honorable Court under 28 U.S.C. 1257(2), as a case in which the highest court of the state has upheld the constitutionality of a state statute in the face of a challenge to the statute's constitutionality.

QUESTION PRESENTED

Is the subsection of the Illinois Statute defining and prohibiting telephone harassment overbroad in proscribing telephone calls made with the intent to abuse, threaten and harass?

THE QUESTION IS NOT SUBSTANTIAL

The Appellants argue that the wide spread practice of penalizing persons who make harassing telephone calls infringes upon the First Amendment, and presents a substantial question for review. The Appellants note that this question has not been addressed by this Honorable Court.

This Court has had the opportunity to address the issue of the constitutionality of telephone harassment statutes and has in the past declined to do so.[1] The People maintain that the instant case does not present a substantial federal question for this Court's

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*This opinion is attached to the Jurisdictional Statement as Appendix A

[1] People v. Smith, 89 Misc.2d 789, 392 N.Y.S.2d 968 (1977), cert. den. 434 U.S. 920 (1977)
Collection Consultants, Inc. v. State, 556 SW.2d 787 (Tex.Ct.Crim.App. 1977), appeal dismissed, 436 U.S. 901 (1978)
Walker v. Dillard, 363 F.Supp. 921 (W.D.Va. 1973), 523 F.2d 3 (4th Cir. 1975), cert. den. 423 U.S. 906 (1975)
Constantino v. State, 243 Ga. 595, 255 SE.2d 710 (1979), cert. den. __ U.S. __, 100 S.Ct. 293 (1979)

consideration, and urge this Honorable Court to dismiss this appeal. Alternatively, the People submit that the decision of the Illinois Supreme Court was manifestly correct, and urge this Court to affirm that decision.

It is the Appellants' contention that the Illinois telephone harassment statute (Ill.Rev.Stat.1977, Ch. 134, Sec. 16.4-1(2)) is overbroad. The Appellants urge that the language of this subsection which prohibits telephone calls made with the intent to abuse, threaten, and harass lacks objective standards with which to evaluate conduct, and thus includes within its sweep speech related conduct which is protected by the First Amendment. The Appellants acknowledge that the State does have the authority to prohibit certain types of speech related conduct, but contend that the legislative goal of proscribing the illegitimate use of the telephone could be and should be "more narrowly achieved," Shelton v. Tucker, 364 U.S. 479, 81 S.Ct. 247, 252, 5 L.Ed.2d 231 (1960).

The People maintain that the Illinois Supreme Court was correct in finding that the words abuse, threaten and harass were not overbroad.[2] While the Appellant's contend that the statute is so broad as to encompass protected communication, the People assert that that is clearly not the case.

First, it is clear that it is the intent of the caller which must be to abuse, threaten, or harass, and not the perception of the person receiving the call which is the determining factor in deciding whether a telephone call falls within the prohibition of the statute. The People submit that a telephone call made for the legitimate purpose of communicating with a person at the called number would of necessity be lacking the specified intent to abuse, threaten or harass.

Secondly, the Illinois Supreme Court has clearly demonstrated its willingness to impose a limiting construction upon the terms of

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[2] See People v. Parkins, 77 Ill.2d 253, 396 N.E.2d 22, 24, 32 Ill.Dec. 909 (1979), attached to the Jurisdictional Statement as Appendix A.

the statute.[3] As the court noted, the application of the principle of noscitur a sociis allows the words "abuse" and "harass" to take on a more restricted meaning due to their association with the word "threaten." The Supreme Court of Louisiana, applied the same principle in upholding the constitutionality of that state's telephone harassment statute.[4] It found that the words "annoy", "harass" and "embarass" were subject to more restricted meanings by virtue of their association with the words "abuse", "torment" and "offend," State v. Meunier, __ La. __, 354 So.2d 535, 537-538 (S.Ct. La. 1978). As that court also observed, "It would be impractical to set forth in detail the numerous forms harassment could take." State v. Meunier, supra, 354 So.2d at 538.

The People also submit that not only would the words "abuse" and "harass" take on a more restricted meaning from their association with the word "threaten", but also the word "threaten" must itself take on a restricted meaning from its use in a statute which involves the imposition of criminal penalties. The Illinois Criminal Code provides a very specific definition of the word "threat"[5] and the

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[3]See People v. Parkins, supra, 396 N.E.2d at 23-24, attached to the Jurisdictional Statement as Appendix A.

[4]La.Rev.Stat.Ann. (1974) Sec. 14:285

[5]Ill.Rev.Stat.1977, Ch. 38, Sec. 15-5

> Threat. As used in this Part C "threat" means a menace, however communicated, to:
> (a) Inflict physical harm on the person threatened or any other person or on property; or
> (b) Subject any person to physical confinement or restraint; or
> (c) Commit any criminal offense; or
> (d) Accuse any person of a criminal offense; or
> (e) Expose any person to hatred, contempt or ridicule; or
> (f) Harm the credit or business repute of any person; or
> (g) Reveal any information sought to be concealed by the person threatened; or
> (h) Take action as an official against anyone or anything, or withhold official action, or cause such action or withholding; or
> (i) Bring about or continue a strike, boycott or other similar collection action if the property is not demanded or received for the benefit of the group which he purports to represent; or
> (j) Testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or
> (k) Inflict any other harm which would not benefit the offender.

People submit that this definition although presented in a different context, would be instructive to the Illinois courts in determining the scope of the word "threaten" in the telephone harassment statute.

Thus, the People conclude that it is not true, as the Appellants contend that the statute in question would encompass within its prohibitions the telephone call "made with the intent to 'threaten' to cancel a subscription for service."[6] Such a "threat" is clearly not one contemplated by a statute which imposes criminal penalties.

The willingness of the Illinois Supreme Court to impose a limiting construction upon the Illinois telephone harassment statute would save that statute from any problem of unconstitutional overbreadth. The court in Walker v. Dillard, 523 F.2d 3 (4th Cir. 1975), cert. den. 423 U.S. 906 (1975) struck down a section of the Virginia telephone harassment statute[7] as overbroad, finding that the state courts had not placed a limiting construction upon the statute, and noting that the federal court was without power to do so. Similarly, in Radford v. Webb, 446 F.Supp. 608 (W.D.N.C., 1978), the court invalidated a section of the North Carolina telephone harassment statute[8] stating, "A statute whose terms are thus susceptible of constitutional as well as unconstitutional application can only survive if it has been authoritatively construed to exclude speech which, though vulgar or offensive, is protected by the First and Fourteenth Amendments." (446 F.Supp. at 611).

Prior to the instant statute, Illinois proscribed the making of telephone calls made with the intent to annoy through a subsection of the Criminal Code dealing with disorderly conduct.[9] The Illinois Supreme Court in People v. Klick, 66 Ill.2d 269, 362 N.E.2d 329, 5 Ill.Dec. 329 (1977) found that subsection of the statute to be uncon-

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[6]Jurisdictional Statement at page 8

[7]Va. Code, (1950) Sec. 18.1-239

[8]N.C. Gen. Stat. (1969) Sec. 14-196

[9]The pertinent part of that statute (Ill.Rev.Stat.1973, Ch. 38, Sec. 26-1(a)(2)) stated: "A person commits disorderly conduct when he knowingly: (2) With intent to annoy another, makes a telephone call, whether or not conversation thereby ensues . . . ."

stitutionally overbroad. The current statute demonstrates a diligent attempt by the legislature of the State of Illinois properly to limit the application of the criminal penalties for telephone harassment.

It is clear that both the legislature and the Supreme Court of the State of Illinois are aware of their responsibility to narrow the application of the telephone harassment statute so as not to interfere with the First Amendment. Their respective efforts to make the language of the statute and its application as narrow as is reasonable under the circumstances are factors to be considered in arriving at the conclusion that the present telephone harassment statute is not overbroad.

The People submit that the Illinois Supreme Court's opinion in the instant case has demonstrated the court's recognition of its duty to place a limiting construction on the Illinois telephone harassment statute. The People maintain that the limiting construction placed on the terms of the statute by the court removes any potential problem of overbreadth.

The Appellants also assert that the Illinois Supreme Court struck an improper balance of interests in finding that the right or privacy of the recipient of an intentionally abusive threatening or harassing telephone call outweighs the caller's freedom of speech. It is the People's position that the recipient's right to privacy must outweigh the caller's right to intrude upon that privacy with an intentionally abusive telephone call.

Communication by telephone is fundamentally different from other forms of communication. It cannot be compared to the person speaking on a street corner whose voice reaches all passers-by, whether they be willing or unwilling listeners. In that situation, the unwilling listener is free to pass the speaker by, incurring no imposition. It cannot be compared to communication by mail, for in that situation the unwilling recipient of the piece of mail may summarily discard it with minimal imposition. It cannot be compared to communication by means of the public media, for an unwilling

listener is always free to turn off his radio or television or refrain from buying and/or reading any material he finds unacceptable. The recipient of a telephone call, however, is not able to avoid the inevitable imposition upon his privacy which results from an unwanted telephone call. To be sure the telephone provides a valuable tool for legitimate communication, but when it is used for an illegitimate purpose, its intrusion on the recipient's privacy becomes intolerable.

The fact that each consumer of telephone service has an identifying number which is readily accessible allows him to be singled out for harassment in a manner that is not similar to any other form of communication. Even if the recipient of a telephone call chooses not to answer, the incessant ringing of the telephone (which is often itself the means of harassment) becomes unbearable. Thus, the People contend that it is clear that the State has a legitimate interest in guarding the privacy of its citizens from calls made with the intent to abuse, threaten and harass.

The People maintain that the State has a legitimate and justifable interest in regulating and proscribing the instrusion into a person's privacy which the abusive, threatening and harassing telephone call presents. As the Appellants note, virtually every state in the union, with few exceptions, has as part of its law a statute regulating the abusive and harassing use of the telephone.[10] This would indicate that it has been uniformly recognized that use of the telephone for purposes of abusing a person at the called number is not a legitimate and protected form of communication.

The Superior Court of the State of Connecticut stated in upholding the constitutionality of its telephone harassment statute:[11]

> As venerated a place as freedom of speech may hold in the constitutional scheme, reasonable regulation of the place and manner of its exercise has been upheld consistently. Breard v. Alexandria, 341 U.S. 622, 642, 71 S.Ct. 920, 95 L.Ed. 1233; Cox v. New Hampshire, 312 U.S. 569, 574, 61 S.Ct. 762, 85 L.Ed. 1049. Where the means of communication involves an intrusion upon privacy, the right of free expression must be balanced against the right to be

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[10] See Jurisdictional Statement, Appendix D

[11] Conn.Gen.Stat.Ann., (1972) Sec. 53a-183

let alone. Rowan v. Post Office Department, 397 U.S. 728, 736, 90 S.Ct. 1484, 25 L.Ed.2d 736. A telephone is not a public forum where, in vindication of our liberties, unreceptive listeners need be exposed to the onslaught of repugnant ideas. See Lehman v. Shaker Heights, 418 U.S. 298, 302-303, 94 S.Ct. 2714, 41 L.Ed.2d 770. The overbreadth principle is not violated by the unrestricted scope of the messages which the statute may ban because it is the manner and means employed to communicate them which is the subject of the prohibition rather their content. The statute is not flawed because a recital on the telephone of the most sublime prayer with the intention and effect of harassing the listener would fall within its ban as readily as the most scurrilous epithet. The prohibition is against purposeful harassment by means of a device readily susceptible to abuse as a constant trespasser upon our privacy. That words may be the instrument of annoyance does not insulate such wrongful conduct from criminal liability.

State v. Anonymous, 34 Conn.Sup. 689, 389 A.2d 1270, 1273-1274 (Sup.Ct. of Conn., App. Sess., 1978)

The same analysis was employed by the Court of Special Appeals of Maryland in upholding the constitutionality of its telephone harassment statute.[12] The court stated:

> The appellant makes the additional argument that Caldwell v. State [26 Md.App. 94, 337 A.2d 476 (1975)] to the contrary notwithstanding, Section 555A is unconstitutional because of the chilling effect it may have upon the First Amendment. The argument misperceives the values protected by that amendment. The right to express ideas does not include the right to impose the communication of those ideas upon an unwilling listener. Cantwell v. Connecticut, 310 U.S. 296, 60 S.Ct. 900, 84 L.Ed. 1213 (1940). The Maryland statute does not prohibit speech or communication as such. It simply protects one from the harassment and annoyance from having his own telephone used in an abusive fashion by an unwanted intruder upon his privacy. Citizens have a right to speak. Citizens also have a right not to be forced to listen. Freedom of speech does not encompass the right to abuse the telephone with the specific intent to annoy and to harass the recipient of the call. Caldwell v. State, supra.
>
> von Lusch v. State, 39 Md.App. 517, 387 A.2d 306, 310 (Ct. of Sp.App. of Md. 1978)

Thus the People conclude that in the context of harassing telephone communication, the recipient's right to privacy outweighs the caller's right to harass. Therefore, the Illinois Supreme Court in

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[12] Md.Crim.Law Code Ann., (1957) Art. 27, Sec. 555A

finding the Illinois telephone harassment statute constitutional did not improperly balance the relative rights of the caller and the recipient.

In conclusion, as has been noted, statutes proscribing telephone harassment exist in some form in practically every state, making it a minor criminal offense purposefully to abuse another person by means of a telephone. As has been argued, the potential unconstitutional overbreadth of such statutes is removed by a limiting construction placed on the terms of the statute by the State courts. It is the People's position that decision of the Illinois Supreme Court is manifestly correct, and that the court's further restriction of the terms of the statute removes any potentially overbroad interpretation. The resulting balance which may have been struck in favor of the call recipient's right to privacy was a proper one.

CONCLUSION

WHEREFORE, the People respectfully submit that the question presented by the Appellant is so unsubstantial as not to require further argument, and the People respectfully move this Honorable Court to dismiss this appeal, or, in the alternative, affirm the judgment entered in this case by the Supreme Court of the State of Illinois.

Respectfully submitted,

William J. Scott
Attorney General
Donald B. MacKay
Melbourne Noel
Assistant Attorneys General
188 W. Randolph
Suite 2200
Chicago, Illinois 60601
(312) 793-2570

Daniel D. Doyle
State's Attorney
Winnebago County
Rockford, Illinois 61105
(815) 987-3160

Phyllis J. Perko
Deputy Director
Barbara A. Preiner
Staff Attorney
State's Attorneys Appellate
Service Commission
35 Fountain Square Plaza
Elgin, Illinois 60120
(312) 697-0020

COUNSEL FOR APPELLEE

APR 18 PAGE 5

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

Supreme Court, U.S.
FILED
APR 4 1980
MICHAEL RODAK, JR., CLERK

NO. 79-5946

ROBERT and LINDA PARKINS, Appellants,

V.

PEOPLE OF THE STATE OF ILLINOIS, Appellee.

NOTICE AND PROOF OF SERVICE

TO: Honorable William J. Scott
Attorney General of Illinois
188 W. Randolph Street
Chicago, Illinois 60601

Honorable Daniel Doyle
State's Attorney
Winnebago County Courthouse
Rockford, Illinois 61101

Phyllis J. Perko, Deputy Director
Illinois State's Attorneys
Appellate Service Commission
35 Fountain Square Plaza
Elgin, Illinois 60120

Robert & Linda Parkins
3305 Liberty Drive
Rockford, Illinois 61103

Jon Gary Noll
608 Ridgely Building
Springfield, Illinois 62701

You are hereby notified that on April 3, 1980, we mailed the original and one copy of the attached Brief Opposing Motion to Dismiss or Affirm in the above entitled cause to the Clerk of the above Court, copies of which are hereby served on you.

Mary Robinson, Deputy Defender

STATE OF ILLINOIS)
) SS
COUNTY OF KANE)

The undersigned being first duly sworn on oath deposes and says that she mailed the required number of copies of the Brief Opposing Motion to Dismiss or Affirm in the above entitled cause to the Clerk of the above Court, the Attorney General of Illinois and the State's Attorney of Winnebago County, by depositing them in the U.S. Mail in Elgin, postage prepaid, this 3rd day of April, 1980.

Mary Robinson, Deputy Defender

Subscribed and sworn to before me

this 3rd day of April, 1980.

Notary Public

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

No. 79-5946

ROBERT and LINDA PARKINS, Appellants,

V.

PEOPLE OF THE STATE OF ILLINOIS, Appellee.

ON APPEAL FROM THE ILLINOIS SUPREME COURT

BRIEF OPPOSING MOTION TO DISMISS OR AFFIRM

Mary Robinson, Deputy Defender
Elizabeth E. Clarke, Assistant Defender
OFFICE OF THE STATE APPELLATE DEFENDER
63 Douglas Avenue
Elgin, Illinois 60120
(312) 695-8822

Counsel for Appellants

April 3, 1980

IN THE

SUPREME COURT OF THE UNITED STATES

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The State of Illinois, in its Motion to Dismiss or Affirm, takes the position that the Illinois Supreme Court was correct in holding the Illinois telephone harassment statute, Ill.Rev.Stat., (Supp., 1979), Ch. 134, Sec. 16.4-1, constitutional in People v. Parkins, 77 Ill.2d 253, 396 N.E.2d 22 (1979), in part due to the State's inaccurate interpretation of Parkins as imposing a limiting construction upon the terms of the statute.

The Illinois Supreme Court did not expressly impose a limiting construction upon the terms of the telephone harassment statute [proscribing use of a telephone with the intent to "abuse, threaten or harass"]. As Justice Moran noted in his dissent to the Court's opinion in Parkins, the State had requested that the statute, failing to set forth objective standards by which to evaluate the conduct proscribed, be upheld by holding the statute applicable only to telephone calls made in an "unreasonable manner", thereby supplying the missing standard. Instead, the Court merely applied the maxim noscitur a sociis, that a word is known by the company

it keeps, to reason that the words "abuse" and "harass" in the statute take color from the word "threaten", and thus acquire a more restricted meaning. This interpretation by the Court hardly constitutes the imposition of a limiting construction since the Court failed to set forth any standard by which to evaluate the conduct proscribed. Indeed, the word "threaten" is not sufficiently narrow itself to avoid infringement on protected First Amendment rights, as evidenced by the statutory definition set forth by the State in footnote 5 on page 5 of its motion. Thus, the Court implicitly rejected the State's request for the imposition of a limiting construction.

By its argument, the State has ignored the widespread impact of the question presented here. As noted in the appellants' brief, legislation proscribing various forms of telephonic communication has been enacted in most states with widely divergent results. Recently, the Oregon Supreme Court held unconstitutionally vague the Oregon statute which defined "harassment" in part as "communicat[ing] with a person, anonymously or otherwise, by telephone, mail or other form of written communication, in a manner likely to cause annoyance or alarm..." . State v. Blair, 287 Or. 519, 601 P.2d 766 (1979). As the Court in Blair pointed out at page 768: "Messages that are likely to cause 'annoyance' or 'alarm' are almost limitless; we will not burden this opinion with hypothetical examples of letters from creditors, employers, angry parents, disappointed customers, jealous lovers, or followers of opposing athletic teams that could theoretically lead to filing a criminal complaint." Similarly, under the Illinois telephone harassment statute, criminal charges could theoretically be brought against creditors for threats made over the telephone, and in all the other situations listed by the Oregon Court. Thus, the question presented is substantial.

For these reasons, and the reasons set forth in the appellants' Jurisdictional Statement, this Court should note probable jurisdiction of this appeal.

Respectfully submitted,

Mary Robinson, Deputy Defender
Elizabeth E. Clarke, Assistant Defender
OFFICE OF THE STATE APPELLATE DEFENDER
63 Douglas Avenue
Elgin, Illinois 60120
(312) 695-8822

Counsel for Appellants

April 3, 1980